IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-189

DEVON V JONES, Plaintiff, vs. NATIONWIDE ADVANTAGE MORTGAGE COMPANY, Defendant.	**MOTION TO DISMISS AMENDED COMPLAINT**

NOW COMES Defendant Nationwide Advantage Mortgage Company (NAMC) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and moves the Court to dismiss this action with prejudice on the grounds that the Amended Complaint filed in this action fails to contain sufficient plausible factual allegations to state a claim upon which relief may be granted. In support thereof, NAMC shows the court the arguments and authorities contained in its brief submitted contemporaneously with this motion and the following:

1. Plaintiff commenced this action on February 2, 2017 in Guilford County District Court seeking to recover compensatory and punitive damages after he allegedly satisfied a debt owed to NAMC by submitting two payments containing language suggesting that the payments were "in full."

2. Plaintiff filed his First Amended Complaint in this court on March 24, 2017. While the formatting and paragraph numbering of the Amended Complaint differs from his original Complaint, the claims and substance are identical.

3. Plaintiff borrowed the original principal sum of $78,000 from NAMC on July 20, 2007 pursuant to a fixed rate note to be repaid plus interest at 7.75% per year over a term of 30 years ("the Note"). A true and accurate copy of the Note is attached hereto as Exhibit A and incorporated herein.[1]

4. The Note is secured by a deed of trust recorded in the Forsyth County Register of Deeds records in Book RE 2770 at Pages 218-2135, which claims an interest in a parcel of real property located in Winston-Salem that has a street address of 1728 Rockford Street. ("the Deed of Trust"). A true and accurate copy of the Deed of Trust is attached hereto as Exhibit B and incorporated herein.

5. Plaintiff alleges that he disputed the debt owed to NAMC in a phone call that occurred on August 11, 2016, then asked for a payoff statement, which is attached as Exhibit B to his Complaint. The payoff statement shows that the amount of his debt as of September 1, 2016 was $70,444.61. (Compl., Ex. B, p. 1.)

6. Plaintiff then alleges that he submitted two payments in the amount of $835 by means of money orders on which he wrote "tendered as full satisfaction of claim."

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[1] The Court can consider the copies of the Note and Deed of Trust attached to this Motion without converting it to a Motion for Summary Judgment because these documents are "integral to and explicitly relied on in the complaint." *See Darcangelo v. Verizon Commc'ns., Inc.*, 292 F.3d 181, 195 (4th Cir. 2002).

He followed these two checks with a series of notices demanding that his loan be cancelled in full.

7. Based solely on this course of conduct, Plaintiff alleges that he is entitled to compensatory and punitive damages, modifications to his credit report, and cancellation of the deed of trust.

8. As shown more fully in the brief accompanying this Motion, Plaintiff fails to allege sufficient facts to allow two payments of $835 to negate a debt of more than $70,000.

WHEREFORE, Defendant Nationwide Advantage Mortgage Company respectfully requests that the Court dismiss this action against it with prejudice, that the Court tax the costs of this action against the Plaintiff, and for such other and further relief as the Court may deem just and proper.

This the 31st day of March, 2017.

/s/ Donald R. Pocock
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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such to the following:

None.

And I hereby certify that I have mailed the foregoing to the following non CM/ECF participants:

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